



**STATE OF MARYLAND  
DEPARTMENT OF THE ENVIRONMENT  
WATER AND SCIENCE ADMINISTRATION**



**COASTAL ZONE CONSISTENCY DETERMINATION**

**Nationwide Permit Reissuance, SPN-20-62**

**ISSUED TO:** U.S. Army Corps of Engineers, Baltimore District  
2 Hopkins Plaza, Baltimore, MD 21201

U.S. Army Corps of Engineers, Philadelphia District  
The Wanamaker Building  
100 Penn Square East, Philadelphia, PA 19107-3390

**DETERMINATION DATE:** December 15, 2020

**PROJECT LOCATION:** State of Maryland

**DESCRIPTION OF PROJECT:** Nationwide Permits (NWP) are general permits issued on a nationwide basis to streamline the authorization of activities that result in discharges of dredged or fill material into Waters of the United States with no more than minimal individual and cumulative adverse environmental effects. Many of the proposed NWP require notification to the District Engineer before commencing those activities, to ensure that the activities authorized by those NWP cause no more than minimal individual and cumulative adverse environmental effects.

On September 15, 2020, the U.S. Army Corps of Engineers (Corps) published in the Federal Register its proposal to reissue the 52 existing NWP with modification and issue five new Nationwide Permits. On September 25 and 30, 2020, respectively, the U.S. Army Corps of Engineers, Philadelphia and Baltimore District (District) requested a Coastal Zone Consistency Determination (Determination) under the Coastal Zone Management Act for the proposed NWP, with specific regionally applicable conditions and proposed suspensions. Further information was submitted by the District's on October 19, 2020. **This Determination is applicable to the terms of the Proposed Nationwide Permits with General and Regional Conditions and only applies if the Final Nationwide Permits and General and Regional Conditions that are issued are no less restrictive than the Proposed Nationwide Permits and General and Regional Conditions.** This Determination is issued for all NWP.

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**BASED ON THE FOLLOWING CONDITIONS, THE DEPARTMENT HAS DETERMINED THAT THE REGULATED ACTIVITIES DESCRIBED IN THE PROPOSED NATIONWIDE PERMITS PUBLISHED SEPTEMBER 15, 2020 AND PROPOSED GENERAL AND REGIONAL CONDITIONS (ATTACHMENTS 1, 2) ARE CONSISTENT WITH THE STATE'S FEDERALLY APPROVED COASTAL ZONE MANAGEMENT PROGRAM, AS REQUIRED BY SECTION 307 OF THE FEDERAL COASTAL ZONE MANAGEMENT ACT OF 1972, AS AMENDED, PROVIDED THAT A PERSON CONDUCTING AN ACTIVITY UNDER A NATIONWIDE PERMIT IN THE MARYLAND COASTAL ZONE SHALL COMPLY WITH ALL APPLICABLE**

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**ENFORCEABLE POLICIES (ATTACHMENT 3) UNDER THE APPROVED  
MARYLAND COASTAL ZONE MANAGEMENT PROGRAM.**

**CONDITIONS**

1) The Department may require issuance of an individual Coastal Zone consistency determination for an activity otherwise included in this Consistency Determination (Determination) when the Department determines that additional review and conditions may be necessary to ensure that any discharge will not violate the approved enforceable policies of the Maryland Coastal Zone Management Program or other appropriate requirements of state law or regulation. Notwithstanding compliance with the terms and conditions of this Determination, the Department retains discretionary authority to require an individual determination for any project based on concerns for foreseeable coastal effects in unique circumstances not previously considered in issuance of the Determination. Circumstances in which this authority may be invoked include but are not limited to: when, on a case-by-case basis, the Department determines that the potential consequences of the proposal warrant individual review; for projects with cumulative environmental impacts that are more than minimal; or where there is a special resource or concern associated with a particular project, which is not addressed with conditions of this Determination and warrants greater review.

Enforceable Policies:

5.1.10 Quality of Life -Erosion and Sediment Control;

5.1.3.2, Water Resources Protection & Management Policy 2 – Protection of Designated Uses

2) The person conducting a Nationwide Permit activity (Permittee) shall meet all performance standards and conditions required by the Department for activities in tidal wetlands, nontidal waterways, their 100-year floodplains, nontidal wetlands, nontidal wetland buffers, or nontidal wetland expanded buffers to ensure that any discharges which may enter waters of this State or the United States will not result in a failure to comply with water quality standards in COMAR 26.08.02.; other water quality requirements of state law or regulation; and enforceable policies under the Maryland Coastal Zone Management Program; and local and State Critical Area Program approvals.

Enforceable Policies:

5.1.10 Core Policies Quality of Life -Erosion and Sediment Control;

5.1.3.2, Water Resources Protection & Management Policy 2 – Protection of Designated Uses;

5.1.4. Flood Hazards & Community Resilience Policies 1 -3

5.2.1 Coastal Uses, limited to Nationwide permit activities which occur in waters of the United States;

5.2.1.1 - 5.2.1.29 Chesapeake and Atlantic Coastal Bays Critical Area

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- 5.2.2 Tidal Wetlands
- 5.2.3 Nontidal Wetlands
- 5.2.6 Living Aquatic Resources

3) If the Department determines that enforceable policies or State water quality standards or other water quality requirements of state law or regulation are not being met, or that State or federal law is being violated, or that further conditions are necessary to assure compliance with such standards, requirements, or laws, the Department may reevaluate and revise this Determination to include conditions appropriate to assure compliance with such standards, requirements, and laws.

Enforceable Policies:

- 5.1.10 Core Policies Quality of Life -Erosion and Sediment Control;
- 5.1.3.2, Water Resources Protection & Management Policy 2 – Protection of Designated Uses;
- 5.1.4. Flood Hazards & Community Resilience Policies 1-3
- 5.2.1 Coastal Uses, limited to Nationwide permit activities which in occur in waters of the United States;
- 5.2.1.1 - 5.2.1.29 Chesapeake and Atlantic Coastal Bays Critical Area
- 5.2.2 Tidal Wetlands

4) The Permittee conducting activities under any Nationwide Permit, excluding Nationwide Permit 27, shall apply the following condition to their project:

- a) Activities which result in loss of stream bed or stream bank may not exceed 300 linear feet or ½ acre, whichever is less.
- b) Compensatory mitigation shall be required for loss of stream bed or bank of 300 linear feet or greater or 1/10 acre, whichever is less.
- c) Compensatory mitigation shall be required for losses at the ratio of 1:1 or its equivalent based upon a method of functional assessment approved by the Department and U.S. Army Corps of Engineers.
- d) Activities which result in the loss of wetlands, including alteration of the plant community to a different vegetation type, e.g., forested to emergent wetland, shall provide compensatory mitigation at amounts required under COMAR 26.23.04 for nontidal wetlands, or COMAR 26.24.05 for tidal wetlands.
- e) Temporary impacts to nontidal and tidal wetlands shall be restored to pre-existing contours and elevations and previous conditions with at least the same nontidal and tidal wetland acreage and equivalent function as indicated by a return to the same wetland type.

Enforceable Policies:

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- 5.1.10 Core Policies Quality of Life -Erosion and Sediment Control;
- 5.1.3.2, Water Resources Protection & Management Policy 2 – Protection of Designated Uses;
- 5.1.4. Flood Hazards & Community Resilience Policies 1-3, Flood Hazards & Community Resilience Policy 1 – No Adverse Impact;
- 5.2.1 Coastal Uses, limited to Nationwide permit activities which in occur in waters of the United States;
- 5.2.1.1 - 5.2.1.29 Chesapeake and Atlantic Coastal Bays Critical Area
- 5.2.2 Tidal Wetlands
- 5.2.4 Forests Forest Policy 1 – Projects Impacting More Than 40,000 Square Feet Must Generally Identify & Protect Habitat & Mitigate for Impacts

5) The Permittee conducting activities under Nationwide Permit 3 Maintenance shall comply with the following enforceable policies limited to those areas which are Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 2 -Buffer Disturbance; and
- 5.2.1 Critical Area Policy 17 – Buffer Management Plan.

6) The Permittee conducting activities under Nationwide Permits 12 Oil or Natural Gas Pipeline Activities, C Electric Utility Line and Telecommunications Activities, and D Utility Line Activities for Water and Other Substances shall apply the following conditions to their project:

- a) A Preconstruction Notification (PCN) is provided when there is:
  - i) Greater than or equal to 0.1 acre of mechanized clearing in a forested nontidal wetland;
  - ii) A discharge in 500 linear feet or more of stream; or
  - iii) The utility line crosses interstate boundaries;
- b) Prevent sidestepping of excavated material into a Water of the United States. Excavated or other fill material shall be placed in a location and manner which does not adversely impact surface or subsurface water flow into or out of tidal wetlands, nontidal wetlands or nontidal waterways;
- c) Excavated material as backfill shall not be placed in the Water of the United States if it contains waste metal products, unsightly debris, toxic material, or any other deleterious substance. If additional backfill is required, use clean material free of waste metal products, unsightly debris, toxic material, or any other deleterious substance;
- d) All stabilization in the nontidal wetland and nontidal wetland buffer shall consist of the following species: Annual Ryegrass (*Lolium multiflorum*), Millet (*Setaria italica*), Barley (*Hordeum sp.*), Oats (*Uniola sp.*), and/or Rye (*Secale cereale*). These species will allow for the stabilization of the site while also allowing for the voluntary revegetation of natural wetland species. Other non-persistent vegetation may be acceptable, but must be approved by the Maryland Department of Environment, Nontidal Wetlands Division. Kentucky 31 fescue shall not be utilized in wetland or buffer areas. The area should be seeded and mulched to reduce erosion after construction activities have been completed

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within accordance with Annotated Code of Maryland, Environment Article, Title 4 and COMAR 26.17.01 shall have an erosion and sediment control plan approved by the appropriate approval authority, including following the stabilization requirements set forth in COMAR 26.17.01.07 and “2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control,” as may be amended;

- e) Activities which result in the loss of wetlands, including alteration of the plant community to a different vegetation type, e.g., forested to emergent wetland, shall provide compensatory mitigation at amounts required under COMAR 26.23.04 for nontidal wetlands, or COMAR 26.24.05 for tidal wetlands; and
- f) Permittee shall comply with the following relevant enforceable policies:
  - 5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control;
  - 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses;
  - 5.1.4. Flood Hazards & Community Resilience Policies 1-3;
  - 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
  - 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
  - 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
  - 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
  - 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas;
  - 5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation;
  - 5.2.3 Non-Tidal Wetlands; Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values;
  - 5.2.4 Forests Forest Policy 1 – Projects Impacting More Than 40,000 Square Feet Must Generally Identify & Protect Habitat & Mitigate for Impacts;
  - 5.2.6 Living Aquatic Resources Policies 1-4 and 6-14;
  - 5.3.4 Oil and Natural Gas Facilities Policies 4-6.
- 7) The Permittee conducting activities under Nationwide Permit 13 Bank Stabilization shall comply with the following enforceable policies limited to those areas which are Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:
  - 5.2.1 Critical Area Policy 2 – Buffer Disturbance; and
  - 5.2.1 Critical Area Policy 17 – Buffer Management Plan

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8) The Permittee conducting activities under Nationwide Permit 14 Linear Transportation Projects shall comply with the following enforceable policies limited to those areas which are Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas;
- 5.2.1 Critical Area Policy 1 – Scope of the Buffer;
- 5.2.1 Critical Area Policy 2 – Buffer Disturbance; and
- 5.2.1 Critical Area Policy 17 – Buffer Management Plan

9) The Permittee of Nationwide Permit 17 Hydropower Projects shall comply with the following enforceable policies limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake or Atlantic Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations; and
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures

10) The Permittee conducting activities under Nationwide Permit 19 Minor Dredging shall comply with the following enforceable policy:

- 5.2.1 Critical Area Policy 2 – Buffer Disturbance

11) The Permittee conducting activities under Nationwide Permit 23 Categorical Exclusions shall comply with the following enforceable policies limited to those areas which are Waters of the United States in the Chesapeake and Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 1 – Scope of the Buffer;
- 5.2.1 Critical Area Policy 2 – Buffer Disturbance; and
- 5.2.1 Critical Area Policy 17 – Buffer Management Plan

12) The Permittee conducting activities under Nationwide Permit 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities shall comply with the following conditions:

- a) Habitat improvement projects in areas meeting the definition of nontidal wetlands having significant plant or wildlife value under COMAR 26.23.01B(80) must maintain or improve the qualifying significant habitat value of these areas;
- b) Forested wetland conversion to another wetland type, excluding loblolly pine plantations and areas having significant plant or wildlife value which do not require a predominantly forested community shall be limited to ½ acre; and

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c) The Permittee has documented to Department satisfaction that sediment released by overtopping a dam will result in a net ecological gain. Testing of sediment size and associated contaminants shall be conducted to the satisfaction of the Department, as required.

Enforceable Policies:

- 5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control;
- 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses;
- 5.1.4. Flood Hazards & Community Resilience Policies 1-3;
- 5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation;
- 5.2.3 Non-Tidal Wetlands; Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values;
- 5.2.4 Forests Forest Policy 1 – Projects Impacting More Than 40,000 Square Feet Must Generally Identify & Protect Habitat & Mitigate for Impacts; and
- 5.2.6 Living Aquatic Resources Policies 1-4 and 6-14

d) The Permittee conducting activities under Nationwide Permit 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities shall comply with the following enforceable policies in addition to #12 a - c above, limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas;
- 5.2.1 Critical Area Policy 1 – Scope of the Buffer;
- 5.2.1 Critical Area Policy 2 – Buffer Disturbance; and
- 5.2.1 Critical Area Policy 17 – Buffer Management Plan

13) The Permittee conducting activities under Nationwide Permit 29 Residential Developments shall comply with the following enforceable policies limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area, and according to the applicable land use category:

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- 5.2.1 Critical Area Policy 11 – Intensely Developed Areas; or
- 5.2.1 Critical Area Policy 12 – Limited Development Areas & Resource Conservation Areas

14) The Permittee conducting activities under Nationwide Permit 38 Hazardous and Toxic Waste shall comply with the following enforceable policies limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area, and according to the applicable land use category:

- 5.2.1 Critical Area Policy 11 – Intensely Developed Areas; or
- 5.2.1 Critical Area Policy 12 – Limited Development Areas & Resource Conservation Areas.

15) The Permittee conducting activities under Nationwide Permit 39 Commercial and Institutional Developments shall comply with the following enforceable policies limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area and according to the applicable land use category:

- 5.2.1 Critical Area Policy 11 – Intensely Developed Areas; or
- 5.2.1 Critical Area Policy 12 – Limited Development Areas & Resource Conservation Areas.

16) The Permittee conducting activities under Nationwide Permit 40 Agricultural Activities shall comply with the following enforceable policy limited to those areas which have foreseeable coastal effect to waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 25 - Best Management Practices for Agriculture,

17) The Permittee conducting activities under Nationwide Permit 42 Recreational Facilities shall comply with the following enforceable policies limited to those areas which are waters of the United States in the Chesapeake or Atlantic Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 1 – Scope of the Buffer; and
- 5.2.1 Critical Area Policy 2 – Buffer Disturbance
- 5.2.1 Critical Area Policy 11- Intensely Developed Area
- 5.2.1 Critical Area Policy 12- Limited Development Areas and Resource Conservation Areas
- 5.2.1 Critical Area Policy 17- Buffer Management Plan

18) The Permittee of Nationwide Permit 43 Stormwater Management Facilities shall:

- a) Ensure that no discharges from the constructed facility:
  - (i) Violate water quality standards; or
  - (ii) Result in erosive flows downstream; and

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- b) Comply with the following enforceable policies for activities in Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area, and according to the applicable land use category:

5.1.3 Water Resources Protection & Management Policy 8 – Stormwater Management;  
5.2.1 Critical Area Policy 11 -Intensely Developed Areas;  
5.2.1 Critical Policy 12 -Limited Development Areas & Resource Conservation  
Areas

- 19) The Permittee conducting activities under Nationwide Permit 44 Mining Activities shall comply with the following enforceable policies limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

5.2.1 Critical Area Policy 18 – Protection of Critical Area from Surface Mining Pollution  
5.2.1 Critical Area Policy 19 – Reclamation Requirements for Mining;  
5.2.1 Critical Area Policy 20 – Restrictions on Sand & Gravel Operations; and  
5.2.1 Critical Area Policy 21 - Prohibition of Wash Plants in Buffer.

- 20) The Permittee of Nationwide Permit 48 Commercial Shellfish Mariculture Activities shall comply with the following conditions:

- a) Submit a Pre-Construction Notification;
- b) Losses of submerged aquatic vegetation (SAV) shall be limited to ½ acre, unless documentation is provided to Department satisfaction that the shellfish mariculture activities will result in a net ecological gain and not violate applicable water quality standards; and
- c) Other conditions of Nationwide Permits A and B

**Enforceable Policies:**

5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses;  
5.2.2 Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation;  
5.2.6 Living Aquatic Resources Policy 1 – Protection of Rare, Threatened or Endangered Fish or Wildlife;  
5.2.1 Living Aquatic Resources Policy 3 – Protection of State Fishery Sanctuaries & Management Resources;  
5.2.6 Living Aquatic Resources Policy 4 – Fish Passage;  
5.2.6 Living Aquatic Resources Policy 8 – Protection & Management of Submerged Aquatic Vegetation (SAV);  
5.2.6 Living Aquatic Resources Policy 9 – Protection of Natural Oyster Bars;  
5.2.6 Living Aquatic Resources Policy 10 – Protection of Oyster Aquaculture Leases;  
5.2.6 Living Aquatic Resources Policy 11 – Genetically Modified Organisms (GMOs) Are Prohibited in State Waters;  
5.2.6 Living Aquatic Resources Policy 12 – Control of Nonnative Aquatic Organisms;

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5.2.6 Living Aquatic Resources Policy 14 – Nonnative Oysters Prohibited in State Waters

5.2.1 Critical Area Policy 1 – Scope of the Buffer;

5.2.1 Critical Area Policy 2 – Buffer Disturbance; and

5.2.1 Critical Area Policy 17 – Buffer Management Plan

21) The Permittee conducting activities under Nationwide Permit 51 Land Based Renewable Energy Generating Facilities shall comply with the following enforceable policies limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

5.2.1 Critical Area Policy 1 – Scope of the Buffer;

5.2.1 Critical Area Policy 2 – Buffer Disturbance;

5.2.1 Critical Area Policy 17 – Buffer Management Plan;

5.2.1 Critical Area Policy 11 – Intensely Developed Areas; and

5.2.1 Critical Area Policy 12 – Limited Development Areas & Resource Conservation Areas.

22) The Permittee conducting activities under Nationwide Permit 52 Water Based Renewable Energy Generating Facilities shall comply with the enforceable policy:

5.2.1 Critical Area Policy 2 – Buffer Disturbance limited to those areas which are waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area

23) The Permittee conducting activities under NWP 53 Removal of lowhead dams shall:

a) Submit with the PCN descriptions of the following:

i) Existing conditions of the impoundment and structure; anticipated particle size distribution and potential pollutants based on past upstream land uses and discharges, which may have accumulated within the impounded area;

ii) Methods and schedule proposed to remove structure and restore flow; stabilize and restore the site of the structure and the impoundment area; and

iii) Documentation that the Permittee has consulted with the Department to determine if a sediment sampling and testing work plan is necessary;

b) If the Department has determined that sampling and testing of sediment is required the Permittee shall;

i) Submit a sediment sampling plan to the Department for review and approval prior to commencing work; and

ii) Implement the sediment sampling plan approved by the Department and submit the sampling results to the Department for review;

c) Based on the sampling results, the Department may require the Permittee to submit an additional implementation and monitoring plan for review and approval that includes at a minimum:

i) Monitoring of the site of the impoundment and downstream areas during and post-removal of the lowhead dam; and

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- ii) Additional sediment and or water quality testing, a sediment removal plan, or other measures deemed necessary by the Department to meet water quality standards;
- d)The Permittee shall implement the approved plan in Condition 23 (c) as approved and required by the Department; and

e) Comply with the following applicable Enforceable Policies;

- 5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control
- 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses
- 5.1.4. Flood Hazards & Community Resilience Policies 1-3
- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alteration;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures
- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas
- 5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation
- 5.2.3 Non-Tidal Wetlands Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values Lost
- 5.2.6 Living Aquatic Resources Policy 1 – Protection of Rare, Threatened or Endangered Fish or Wildlife
- 5.2.6 Living Aquatic Resources Policy 3 – Protection of State Fishery Sanctuaries & Management Resources.
- 5.2.6 Living Aquatic Resources Policy 4 – Fish Passage
- 5.2.6 Living Aquatic Resources Policy 6 – Protection of Forest Buffers Along Trout Streams
- 5.2.6 Living Aquatic Resources Policy 7 –Non-Tidal Habitat Protection & Mitigation
- 5.2.6 Living Aquatic Resources Policy 8 – Protection & Management of Submerged Aquatic Vegetation (SAV)

24) The Permittee conducting activities under Nationwide Permit 54 Living Shorelines shall comply with the following enforceable policies:

- 5.2.1 Critical Area Policy 1 – Scope of the Buffer;
- 5.2.1 Critical Area Policy 2 – Buffer Disturbance; and
- 5.2.1 Critical Area Policy 17 – Buffer Management Plan

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25) The Certification Holder conducting activities under Nationwide Permits A Seaweed Mariculture Activities and B Finfish Mariculture Activities shall comply with the following conditions:

- a) Submit a Pre-Construction Notification;
- b) Losses of submerged aquatic vegetation (SAV) shall be limited to ½ acre, unless documentation is provided to Department satisfaction that the mariculture activities will result in a net ecological gain and not violate applicable water quality standards;
- c) Structures and activities may not interfere with movement of aquatic life, fish, and other wildlife not confined within the mariculture facility of area of disturbance or mariculture activity;
- d) Non-native species may not be introduced with adverse effect on the aquatic ecosystem;
- e) Structures shall be designed and placed to avoid entanglement of other fish, aquatic life, and wildlife;
- f) Volume of fish, feed, and waste shall be managed to prevent violation of water quality standards; and
- g) Mariculture Activities under Nationwide Permits A or B, when combined with Nationwide Permit 48 Commercial Shellfish Mariculture Activities, or as a multi-trophic mariculture system, including shellfish mariculture, shall comply with all conditions under Nationwide Permit 48.
- h) Shall comply with the following enforceable policies:
  - 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses;
  - 5.2.2 Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation;
  - 5.2.6 Living Aquatic Resources Policy 1 – Protection of Rare, Threatened or Endangered Fish or Wildlife;
  - 5.2.6 Living Aquatic Resources Policy 3 – Protection of State Fishery Sanctuaries & Management Resources;
  - 5.2.6 Living Aquatic Resources Policy 4 – Fish Passage;
  - 5.2.6 Living Aquatic Resources Policy 8 – Protection & Management of Submerged Aquatic Vegetation (SAV);
  - 5.2.6 Living Aquatic Resources Policy 9 – Protection of Natural Oyster Bars;
  - 5.2.6 Living Aquatic Resources Policy 10 – Protection of Oyster Aquaculture Leases;
  - 5.2.6 Living Aquatic Resources Policy 11 – Genetically Modified Organisms (GMOs) Are Prohibited in State Waters;

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- 5.2.6 Living Aquatic Resources Policy 12 – Control of Nonnative Aquatic Organisms;
- 5.2.6 Living Aquatic Resources Policy 14 – Nonnative Oysters Prohibited in State Waters
- 5.2.1 Critical Area Policy 1 – Scope of the Buffer;
- 5.2.1 Critical Area Policy 2 – Buffer Disturbance; and
- 5.2.1 Critical Area Policy 17 – Buffer Management Plan

26) The Permittee conducting activities under Nationwide Permit E shall comply with the following enforceable policy:

5.2.1 Critical Area Policy 2 – Buffer Disturbance.

27) Activities which result in an earth disturbance subject to the requirements in Annotated Code of Maryland, Environment Article, Title 4 and COMAR 26.17.01 shall have an erosion and sediment control plan approved by the appropriate approval authority, including following the stabilization requirements set forth in COMAR 26.17.01.07 and “2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control,” as may be amended.

Enforceable Policy:

5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control

28) The disturbance of the bottom of the water and sediment transport into adjacent State waters shall be minimized.

Enforceable Policies:

- 5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control;
- 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses;
- 5.1.4. Flood Hazards & Community Resilience Policies 1-3;
- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas;
- 5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation;
- 5.2.3 Non-Tidal Wetlands; Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values;
- 5.2.6 Living Aquatic Resources Policies 1-4 and 6-14;

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29) Instream Construction Prohibition: To protect important aquatic species, activities within stream channels are prohibited as determined by the classification of the stream (COMAR 26.08.02.08). Instream work may not be conducted from:

- Use I – March 1 through June 15, inclusive of any year. The instream prohibition shall be from March 1- June 30, inclusive, when short nose sturgeon may be present,
- Use II – February 1 through May 31, inclusive of any year. The instream prohibition shall be from February 1- June 30 inclusive, when short nose sturgeon may be present,
- Use III – October 30 through April 30, inclusive of any year,
- Use IV – March 1 through May 31, inclusive of any year

Enforceable Policies:

5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses

- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 9 - Time of Year Restrictions for Construction in Streams
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas
- 5.2.6 Living Resources Policies 1-9

30) The regulated activity shall be conducted so as not to restrict or impede the:

- (a) Movement of wildlife indigenous to the nontidal wetlands or adjacent water, and
- (b) Passage of normal or expected high water flows.

Enforceable Policies:

5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses

5.1.4. Flood Hazards & Community Resilience Policies 1-3

- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 9 - Time of Year Restrictions for Construction in Streams
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas
- 5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation
- 5.2.3 Non-Tidal Wetlands Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values Los
- 5.2.6 Living Resources Policies 1-9

31) Stream crossings shall be designed and implemented to meet, at a minimum, the following performance criteria:

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- a) Structure shall span the bankfull wetted width and have additional headroom to provide semi-aquatic and terrestrial wildlife passage for species capable of movement through the pre-disturbance channel.
- b) If a bridge is not feasible due to site constraints, then culvert bottoms, including footers, shall be embedded below the streambed a minimum of 2 feet and shall be embedded below the vertical adjustment potential of the streambed. Pipe culverts should be embedded at least 25%, or 2 feet, whichever is less.
- c) Water velocity and depth within the crossing structure shall match those observed at reference conditions within the stream under a variety of flows. Low-flow conditions may not result in reduced fish passage within the culvert, compared to upstream and downstream conditions.
- d) Substrate shall be placed within the structure, including both fine and coarse substrate, and should match the natural substrate found upstream and downstream of the crossing during normal flow conditions. Bank and other key bed structural elements and characteristics should be resilient to high-flow events and may require additional channel manipulation upstream and downstream of the structure (e.g., stream restoration, stabilization, etc.). Scour protection may not result in reduced fish passage and should be avoided where possible.
- e) Culverts shall be aligned with the natural stream channel and skew should be minimized, not exceeding 30 degrees. The structure gradient shall be no steeper than the streambed gradient at either end of the crossing and should match the overall streambed gradient based on reference reach conditions. The culvert shall be designed and installed to retain transport rock and sediment to mimic natural bed conditions. When possible, crossing structures should be located at a pool feature.

Enforceable Policies:

- 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses
- 5.1.4. Flood Hazards & Community Resilience Policies 1-3
  - 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
  - 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
  - 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
  - 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
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- 5.2.6 Living Resources Policies 1-9

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32) The Permittee shall obtain any and all additional authorizations or approvals, including self-certifying General Permits issued by MDE, and shall comply with all conditions of such authorizations.

Enforceable Policies:

- 5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control;
- 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses;
- 5.1.4. Flood Hazards & Community Resilience Policies 1-3
- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
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- 5.2.6 Living Resources Policies 1-9

33) This Determination does not obviate the need to obtain required authorizations or approvals from other State, federal or local agencies as required by law.

Enforceable Policies: All Enforceable Policies

34) The proposed project shall be constructed in accordance with the approved final plan by the Department, or, if Department approval is not required, the plan approved by the ACOE; and its approved revisions.

Enforceable Policies:

- 5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control;
- 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses; 5.1.4. Flood Hazards & Community Resilience Policies 1-3;
- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
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5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation;

5.2.3 Non-Tidal Wetlands; Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values;

5.2.4 Forests Forest Policy 1 – Projects Impacting More Than 40,000 Square Feet Must Generally Identify & Protect Habitat & Mitigate for Impacts;

5.2.6 Living Aquatic Resources Policies 1-4 and 6-14

35) All fill and construction materials not used in the project shall be removed and disposed of in a manner which will prevent their entry into waters of this State.

5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses;

5.1.4. Flood Hazards & Community Resilience Policies 1-3;

5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;

5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;

5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;

5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;

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5.2.3 Non-Tidal Wetlands; Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values;

5.2.6 Living Aquatic Resources Policies 1-4 and 6-14

36) This Determination does not authorize any injury to private property, any invasion of rights, or any infringement of federal, state, or local laws or regulations.

Enforceable Policies: All Enforceable Policies

37) The Permittee shall allow authorized representatives of the Department access to the site of authorized activities during normal business hours to conduct inspections and evaluations of the operations and records necessary to assure compliance with this Determination.

Enforceable Policies: All Enforceable Policies

38) This Determination is valid for the NWP's identified herein until such time that the NWP's expire and are not administratively extended.

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Enforceable Policies: All Enforceable Policies

Failure to comply with these conditions shall constitute reason for MDE to suspend or revoke the Permittee's authorization to conduct activities under this Determination and may subject the Permittee to criminal and/or civil penalties or other enforcement action in accordance with applicable law.

**DETERMINATION ISSUED:**

**DATE:**

12/15/2020



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Heather L. Nelson, Acting Program Manager  
Federal Consistency Coordinator  
Wetlands and Waterways Program  
Water and Science Administration

Attachments (1-3)